

Notice of Allowability

Application No.

10/691,590

Examiner

Cathy K. Worley

Applicant(s)

KOCHHAR ET AL.

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to papers received on Sept. 13, 2006.
2. ☒ The allowed claim(s) is/are 5,7-11,19 and 20.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

DETAILED ACTION

1. The rejection under 35 USC 112, first paragraph, for lack of enablement is withdrawn in light of the arguments and affidavit provided in the papers filed on Sept. 13, 2006.

EXAMINER'S AMENDMENT

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Robert M. Barrett on Sept. 22, 2006.

The application has been amended as follows:

Claims 1-4 (Canceled)

Claim 5 (currently amended): An isolated or synthesized polynucleotide ~~comprising~~ consisting of a nucleotide sequence encoding the polypeptide ~~identified by~~ of SEQ ID NO: 1; or ~~a fragment thereof comprising~~ SEQ ID NO:3 .

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Claim 6 (canceled)

Claim 7 (currently amended): A vector containing the ~~nucleotide sequence~~
polynucleotide of claim 5 operably linked to a promoter.

Claim 8 (currently amended): A non-human cell containing the vector of claim 7.

Claims 12-18 (canceled)

Claim 19 (currently amended): A method of producing cocoa beans with increased cocoa flavor peptides, the method comprising transforming a cocoa cell with ~~one or more of the nucleotide sequences of claim 5, vector of claim 7~~ and generating at least one cocoa plant from the transformed cell, and producing cocoa beans from the transformed plant, wherein the beans express said polypeptide.

3. The following is an examiner's statement of reasons for allowance:

After consideration of the affidavit provided by the Applicant on Sept. 13, 2006, the Examiner is withdrawing the rejection under 35 USC 112, first paragraph, because it would not require undue experimentation to determine if the claimed polypeptides can be used to improve chocolate flavor.

The amendments to the claims were required to limit the scope to the peptides that were discovered in the instant application to ensure that the claims do not read on the full-length vicillin protein from cocoa beans because the full-length vicillin protein is already known in the art; for example, US Patent No. 5,770,433 teaches the larger protein (SEQ ID NO:1) which comprises the instant SEQ ID NO:3. However, the prior art does not teach or fairly suggest the peptides of instant SEQ ID NO:1 or instant SEQ ID NO:3.


4. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cathy K. Worley whose telephone number is (571) 272-8784. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



ASHWIN D. MEHTA, PH.D.
PRIMARY EXAMINER

CKW

Sept. 26, 2006